Filed 2/26/16 In re Nathan C. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re NATHAN C. et al., Persons Coming Under the Juvenile Court Law.

SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

MARIA C.,

Defendant and Appellant.

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A145194

(Solano County Superior Court Nos. J42798, J42799)

The juvenile court adjudged Nathan C. and Ethan C. (collectively, children) dependents of the court and removed them from Maria C.'s (mother) custody (Welf. & Inst. Code, §§ 300, 361).[1] Mother appeals the dispositional order. She contends insufficient evidence supports removing the children from her care. We disagree and affirm.

[1] All further statutory references are to the Welfare and Institutions Code. Presumed father, Y.D., (father) is not a party to this appeal and is mentioned only where necessary.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father are parents of Nathan C., born in 2011, and Ethan C., born in 2014. In early December 2014, father hit mother with a belt. "[A]s he struck her, he also struck Nathan who was clinging to [ ] mother's legs." Father also "forcefully sodomized" mother "as punishment," especially when she denied his sexual advances. "The first time this happened, Nathan was in the room" and mother begged father not to "do this in front of Nathan." During another December 2014 incident, father — who was holding Ethan — "continuously punched" mother and pushed her. Nathan watched and Ethan was "flung around[.]" Vallejo police officers arrested father; mother obtained a temporary restraining order (TRO) against father.

Detention and Jurisdiction

In January 2015, the Solano County Health and Social Services Department (the Department) filed a petition alleging the children came within section 300, subdivision (b). As amended, the petition alleged: (1) mother "has been involved in a relationship with [ ] father . . . marked with domestic violence. The children . . . have witnessed several domestic violence incidents between the parents. . . . [M]other has failed to protect the children from ongoing domestic violence in the home," which places "the children . . . at substantial risk of significant physical harm[;]" and (2) father "has engaged in multiple acts of domestic violence with [ ] mother . . . in the presence of the children . . . including acts on or about December 12, 2014 which resulted in his arrest. Such actions . . . place the children . . . at substantial risk of significant physical harm." The court detained the children, declared them dependents of the court, and ordered reunification services for mother.

Shortly before the jurisdictional hearing, mother recanted and claimed "'nothing happened'" in December 2014. She told the Department her "bruises were caused at her work and not by [father]" and that "if the restraining order was not in place, then she and [father] would be living together." The social worker, however, felt mother's initial description of "the domestic violence with [father]" was "honest" and mother's fear of

father "'was so real.'" According to the social worker, mother's coworkers knew about the domestic violence and father's parents had commented "they 'couldn't control him.'"

Mother submitted to jurisdiction and the court adjudged the children dependents of the court (§ 300, subd. (b)).

Disposition

At the March 2015 dispositional hearing, mother's former social worker, Mayra Montaño, testified for the Department.[2] In February 2014, mother denied "any domestic violence had occurred" and claimed "it had all been a misunderstanding" because she was sleep deprived and tired. Montaño opined "the children would be at very high risk of abuse and/or neglect" in mother's care because mother had described the domestic violence and was interested in participating in domestic violence services "but then recanted" and claimed "the domestic violence had not occurred." According to Montaño, mother "had not show protective capacities because she was willing to go back to that situation[,]" i.e., to resume a relationship with father.

Flores testified the Department had "no other recourse but to file a petition for removal" after mother reported the domestic violence in December 2014. Mother began attending a weekly domestic violence support group in February 2015. At the first support group meeting, mother denied "there was any domestic violence" in her relationship with father, but later admitted "she had been a victim of domestic violence." In February 2015, mother attended individual and group therapy sessions and understood "there were problems" in her relationship with father. Mother was working on "cultivating self-esteem and empowering herself."

At the same time, however, mother minimized father's physical abuse. According to Flores, Mother's "credibility is compromised. She's made various statements, and it's been difficult to understand what . . . is true." Flores opined mother was only "three weeks into her recovery process in admitting that there was a problem in the relationship.

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[2] Montaño prepared the jurisdictional and dispositional reports. Social worker Kristin Flores replaced Montaño shortly before the dispositional hearing, when Montaño left the Department to become a mental health clinician.

However . . . these children, they're very vulnerable, they've been in the throes of domestic violence, and they're at substantial risk of future harm if they were to [be] return[ed]" to mother "at this moment." Mother needed more time to gain insight on how "the domestic violence . . . impacted her ability to protect" the children. Flores was also concerned the maternal grandparents did not have "the capacity to be protective."[3]

Social worker Isabel Ott helped mother complete the TRO paperwork in December 2014. Mother described the domestic violence to Ott and showed Ott "a bruise on her left inner leg from where [father] had struck her." Ott completed the TRO forms and mother read everything Ott had written. Later, however, mother told Ott "she didn't want to follow through with anything anymore[.]" According to Ott, a person who denies the existence of domestic violence cannot protect her children from that violence.

Mother testified a TRO prevents father from coming near her home. She had learned strategies to prevent domestic violence, and knew where to go for assistance. On cross-examination, mother minimized the physical violence in her relationship with father. Mother claimed father had not punched, pushed, or sodomized her, and the children had never witnessed father hurt her.

At the conclusion of the dispositional hearing, the court found clear and convincing evidence there was a significant risk of harm to the children if they remained in mother's care. The court noted the children were emotionally injured from being present during the domestic violence and that restraining orders were "no guarantee of safety." The court also concluded there were no reasonable means to protect the children without removing them from mother's care.

DISCUSSION

Mother challenges the dispositional order removing the children from her custody. A dependent child may not be removed from the custodial parent unless the juvenile

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[3] The children's maternal grandmother, L.C., testified mother and father had a "good" relationship; mother had never told L.C. that father had been violent. L.C. planned to live with mother and the children; she would call the police if she saw father within 100 yards of mother. Flores believed the children could be returned to mother if she "maintain[ed] her involvement in services[.]"

court finds by clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1); *In re Henry V.* (2004) 119 Cal.App.4th 522, 528.) "A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) "'We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]'" (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116, quoting *In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Mother contends there was insufficient evidence of a "risk of harm" to the children because she had filed for a restraining order and was engaging in services, and because L.C. planned to live with her and protect her from father. We are not persuaded. Mother's alternate view of the evidence does not establish a lack of substantial evidence supporting the court's conclusion. Here, mother submitted to jurisdiction: she admitted her relationship with father was "marked with domestic violence" witnessed by the children, and that she "failed to protect the children from ongoing domestic violence in the home," which placed them "at substantial risk of significant physical harm." "[J]urisdictional findings are prima facie evidence the child cannot safely remain in the home." (*In re R.V.* (2012) 208 Cal.App.4th 837, 849.)

At the time of the dispositional hearing, mother had been engaged in services for only a few weeks, and had not consistently acknowledged the serious domestic violence in her relationship with father. Mother reported father's abuse in December 2014 but recanted in January 2015 and denied "any domestic violence had occurred[.]" Mother eventually admitted being a victim of domestic violence in February 2015, but minimized the physical abuse she suffered. At the March 2015 dispositional hearing, mother refused to admit father had sodomized her, punched, or pushed her with the children present.

The social workers testified mother's issues with domestic violence were not fully resolved, which put the children at substantial risk of future harm. Montaño opined "the children would be at very high risk of abuse and/or neglect" in mother's care because she denied the domestic violence and was willing to resume a relationship with father. Flores testified mother was only "three weeks into her recovery process in admitting that there was a problem in the relationship. However . . . these children, they're very vulnerable, they've been in the throes of domestic violence, and they're at substantial risk of future harm if they were to [be] return[ed]" to mother "at this moment." According to Flores, mother needed more time to gain insight on how "the domestic violence has impacted her ability to protect" the children. Ott testified a person who denies the existence of domestic violence cannot protect her children.

Mother's reliance on *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*) does not alter our conclusion. In *Daisy H.*, the father called the mother derogatory names and pulled her hair and choked her several years before the filing of the section 300 petition. There was no evidence the children witnessed the hair-pulling incident. (*Daisy H.*, *supra*, at p. 717.) The *Daisy H.* court held physical violence between parents supports jurisdiction under section 300, subdivision (b) only when there is evidence "the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*Daisy H.*, *supra*, at p. 717.) The court also concluded name-calling did not put the children at risk of emotional harm under section 300, subdivision (b). (*Daisy H.*, *supra*, at p. 718.)

Numerous factual differences prevent *Daisy H.* from applying here. First, mother submitted to jurisdiction, admitting she had failed to protect the children from substantial risk of significant physical harm. Second, the abuse in *Daisy H.* stopped *years* before the section 300 petition was filed. (*Daisy H., supra,* 192 Cal.App.4th at p. 717.) Here, father hit mother with a belt in December 2014, just three months before the dispositional hearing. Father also "struck Nathan, who was clinging" to mother. In December 2014, father also punched and pushed mother as he was holding Ethan. Nathan watched, and Ethan was "flung around." Finally, Nathan saw father sodomize mother. Finally — and

unlike *Daisy H.* — the children witnessed the domestic violence and were physically harmed.[4] "'Both common sense and expert opinion indicate spousal abuse is detrimental to children.'" (*In re E.B.* (2010) 184 Cal.App.4th 568, 576, quoting *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5.)

That mother made some progress in the 10 weeks from detention to disposition does not demonstrate insufficient evidence supports the court's removal order. (*In re T.W., supra,* 214 Cal.App.4th at p. 1163; *In re Francisco D.* (2014) 230 Cal.App.4th 73, 83 [substantial evidence of a "substantial and current risk" to the minor's "emotional and physical well-being" if he remained in the mother's care].) We conclude substantial evidence supports the court's finding the children would be at substantial risk of harm if returned to mother's custody. (§ 361, subd. (c)(1); *In re R.V., supra,* 208 Cal.App.4th at p. 849.)

Finally, we reject mother's claim — unsupported by authority — that there were "options other than removal" to keep the children "safe, such as enforcement of the restraining order and [mother']s engagement in services." As the trial court recognized, restraining orders are "no guarantee of safety[,]" particularly where mother had indicated a desire to reunite with father. Mother engaged in services, but continued to minimize — and in some instances — deny the domestic violence. Additionally, Flores was concerned the maternal grandparents did not have "the capacity to be protective." Under the circumstances, the court properly concluded there were no reasonable means to protect the children without removing them from mother's care. (*In re A.S.* (2011) 202 Cal.App.4th 237, 248.)

DISPOSITION

The dispositional order is affirmed.

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[4] *In re Jesus M.* (2015) 235 Cal.App.4th 104 is distinguishable for similar reasons.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.